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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION**

George Calcut, *et al.*,

Plaintiffs,

v.

Paramount Residential Mortgage Group
Incorporated, *et al.*,

Defendants.

Case No. 2:22-cv-01215

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO
PLAINTIFFS' MOTION TO
EXCLUDE OR STRIKE
DEFENDANTS' EXPERT
DISCLOSURE OF NON-
RETAINED EXPERT RAYMOND
CRAWFORD**

Defendants, Paramount Residential Mortgage Group Inc. and Cenlar FSB ("Defendants"), file this Objection and Response to Plaintiffs George Calcut and Geri Calcut's ("Plaintiffs") Motion to Exclude or Strike Defendants' Expert Disclosure of Non-Retained Expert Raymond Crawford ("Mr. Crawford") [Doc 47]. Defendants request this Court deny Plaintiffs' Motion, and would respectfully show as follows:

INTRODUCTION

Mr. Crawford was previously designated as Cenlar's corporate representative under Rule 30(b)(6) and was deposed by Plaintiffs on March 31, 2023. On April 7, 2023, Defendants additionally disclosed Mr. Crawford as a non-retained expert witness to rebut

1 the testimony of Plaintiff's designated expert, Thomas Tarter, who seeks to testify regarding
2 purported errors in the handling of Plaintiffs' loan modification and investigation of
3 Plaintiffs' credit reporting dispute. Should Mr. Tarter's opinion testimony be allowed by
4 the Court, Mr. Crawford will provide rebuttal testimony to show that Cenlar acted in
5 accordance with industry standards in offering and implementing a VA Disaster
6 Modification for Plaintiffs' loan and by making corrections to credit reporting for Plaintiff's
7 loan.
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10 Defendant's Motion to exclude Mr. Crawford as a non-retained rebuttal expert is
11 meritless and should be denied. Under Federal Rule 26(a)(2)(C), there is no duty to produce
12 a written report for a non-retained expert such as Mr. Crawford. Second, Defendants'
13 disclosures sufficiently identify Mr. Crawford's opinions and his expected testimony, which
14 concern subjects about which Plaintiffs questioned Mr. Crawford extensively during his
15 March 31, 2023 deposition. Although Plaintiffs had ample opportunity, they neither
16 requested additional disclosures nor sought to re-depose Mr. Crawford regarding his expert
17 opinions. Based on more than a decade of experience in the mortgage servicing industry,
18 Mr. Crawford is more than qualified to rebut Plaintiff's purported expert testimony
19 regarding mortgage servicing. Therefore, this Court should deny Plaintiff's motion to strike
20 the expert disclosure as to Mr. Crawford. In the alternative, should this Court find that
21 additional disclosures are required, Defendants request this Court permit the opportunity to
22 supplement their disclosures.
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ARGUMENT AND AUTHORITIES

I. Defendants are not required to provide an expert report from Ray Crawford as a non-retained expert.

Plaintiffs argue that Mr. Crawford was required to provide an expert report, invoking cases involving testimony from treating physicians. Defendants disclosed Mr. Crawford as a non-retained expert under Rule 26(a)(2)(C) and his testimony is therefore exempt from Rule 26(a)(2)(B)'s written report requirement. *See Alsadi v. Intel Corp.*, No. CV-16-03738-PHX-DGC, 2020 WL 4035169, at *13 (D. Ariz. July 17, 2020). Only those witnesses who are "retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony" must produce a report. *Roosevelt Irrigation Dist. v. United States*, No. CV-15-00448-PHX-JJT, 2019 WL 1087939, at *4 (D. Ariz. Mar. 7, 2019). "A written report doesn't need to accompany the disclosure of an expert witness who isn't retained or specially employed to provide expert testimony." *Excel Fortress Ltd. v. Wilhelm*, No. CV-17-04297-PHX-DWL, 2019 WL 163252, at *5 (D. Ariz. Jan. 9, 2019). Because Mr. Crawford has not been retained to provide expert testimony, nor do his duties as Cenlar's employee regularly involve the giving of expert testimony, no written report is necessary.

II. Ray Crawford's facts and opinions as an expert have been sufficiently identified.

Defendants' disclosures provide sufficient information regarding Mr. Crawford's expected testimony. Defendants were required to submit a disclosure which contained the subject matter of the expert testimony and a summary of the facts and opinions on which Mr. Crawford would testify. These disclosures do not require "undue detail," but simply a

1 summary of the facts and opinions the expert is expected to provide. *Lambert v. Liberty*
2 *Mut. Fire Ins. Co.*, No. 2:14-CV-00521 JWS, 2016 WL 3193252, at *2 (D. Ariz. June 9,
3 2016).

4
5 The court's decision in *Roosevelt Irrigation* illustrates that non-retained expert
6 disclosures are not required to be made in excessive detail. The Court in that case found
7 disclosures sufficient based on the following concise description of the non-retained
8 expert's opinions: that certain wells were "constructed for authorized Project purposes" and
9 were "integral to the operation of the Salt River Federal Reclamation Project," and that the
10 United States "has a legal interest in those facilities." 2019 WL 1087939, at *4.

11
12 Defendants have disclosed that Mr. Crawford will rebut Thomas Tarter's testimony
13 by testifying that "Cenlar and PRMG have acted reasonably in connection with the matters
14 alleged in the Complaint and in compliance with industry standards." Specifically, Mr.
15 Crawford will testify "on matters relating to the servicing of the loan at issue in this case,
16 including [] Cenlar's handling of loss mitigation activity for the subject loan, Cenlar's
17 credit reporting, and correction of credit reports to consumer reporting agencies, Cenlar and
18 PRMG's responses to Plaintiffs' inquiries and complaints, and any industry standards that
19 may be applicable to these activities." Defendants likewise disclosed the factual basis for
20 this opinion, stating that Mr. Crawford had reviewed the loan documents produced by
21 Cenlar. In designating Mr. Crawford's rebuttal testimony, Defendants do not concede that
22 any industry standards are in fact relevant to a determination of the claims in this case.
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26 Defendants' disclosures should also be considered in relation to the disclosures
27 provided by the proposed expert whom Mr. Crawford will rebut, Thomas Tarter. Mr.
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1 Tarter's expert report is verbose but light on substance. Despite making sweeping
2 pronouncements that Defendants violated "industry standards," the only standards that Mr.
3 Tarter actually identifies in his report are "Maintain files and records in a professional
4 manner," "Be honest with a borrower," "Good faith and fair dealing with potential
5 borrowers and then with borrowers," and "Compliance with laws and regulations." [See
6 Tarter Expert Report, Doc. 49-1 at p.11.] Given these nebulous and non-specific
7 pronouncements that could apply to virtually any mortgage servicing dispute, Plaintiffs
8 cannot reasonably insist that Defendants anticipate the need for rebuttal testimony with
9 greater specificity.

12 **III. Any inadequacies in disclosures are harmless because Plaintiffs have had**
13 **sufficient opportunity to depose Mr. Crawford regarding the basis for his**
14 **opinions.**

15 To the extent this Court finds Defendants' disclosures of Mr. Crawford deficient, Mr.
16 Crawford should nonetheless be allowed to testify because any such deficiency would be
17 harmless. Fed. Rule Civ. Pro 37(c)(1); *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259
18 F.3d 1101, 1107 (9th Cir. 2001). Any deficiency in disclosures "is harmless when there is
19 no prejudice to the party entitled to the disclosure." *Ditko v. Fabiano Commc'ns Inc.*, No.
20 CV-19-04442-PHX-MTL, 2020 WL 4933627, at *3 (D. Ariz. Aug. 24, 2020), *aff'd*, No.
21 20-16855, 2021 WL 5447021 (9th Cir. Nov. 22, 2021) (citing *Taft v. Am. Family Mut. Ins.*
22 *Co.*, No. CV-11-2599-PHX-SMM, 2013 WL 5498226, at *3 (D. Ariz. Oct. 1, 2013)).

24 Here, Plaintiffs' deposed Mr. Crawford on March 31, 2023. Plaintiffs' 30(b)(6)
25 notice identifies topics relating to Cenlar's handling of loss mitigation, corrections to credit
26 reporting, and responses to Plaintiffs' CFPB complaints. *See Ex. A.* In the deposition,
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1 Plaintiff's counsel questioned Mr. Crawford about his more than a decade of experience
2 working with Cenlar, and questioned him extensively regarding Cenlar's handling of
3 Plaintiffs' loan modification and its corrections to credit reporting. After Defendants
4 disclosed Mr. Crawford as a non-retained rebuttal expert, Plaintiffs did not request
5 additional disclosures, nor did they seek to re-depose Mr. Crawford following the expert
6 designation. This is presumably because Plaintiffs recognized that they obtained sufficient
7 information regarding Mr. Crawford's opinions from Defendants' disclosures and
8 testimony at the 30(b)(6) deposition. Even now, the only deficiencies Plaintiffs point to in
9 Mr. Crawford's testimony are a few questions that seek legal opinions or information that
10 is at best tangential to the issues in dispute.
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13 Having received ample information about Mr. Crawford's opinions and the factual
14 basis for them, Plaintiffs cannot now claim Defendants' disclosures somehow caused them
15 prejudice. Therefore, even if this Court were to find Defendants' disclosures were
16 insufficient, this would not warrant preclusion of the expert witness.
17

18 **IV. Mr. Crawford should not be faulted for answers to questions seeking legal**
19 **opinions or concerning topics that Plaintiffs did not identify in their Notice of**
20 **30(b)(6) Deposition.**

21 Plaintiffs complain in their motion that Mr. Crawford did not know answers to some
22 of the questions asked of him at the deposition, but fail to acknowledge that these questions
23 concern information that was not specified in their notice of deposition and designated
24 30(b)(6) topics. In their deposition notice, Plaintiffs included topics broadly seeking
25 testimony about Cenlar's procedures for implementation of the VA Partial Claims Program
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1 (“VAPCP”).¹ Cenlar was not required by VA regulations to offer the VAPCP and, as Mr.
2 Crawford testified, in fact did not begin to offer the program until October 2021, after
3 Plaintiffs had completed a trial payment plan and received a VA Disaster Modification.
4 This was the only fact concerning the program of relevance to the issues in dispute in this
5 case.
6

7 Nevertheless, in their Motion, Plaintiffs complain that Mr. Crawford did not know
8 answers to various questions not specified in their 30(b)(6) topics, including: (1) “How
9 much time Cenlar gets to make a V.A. Program to borrowers after the V.A. makes it
10 effective,” (2) “Who gets to decide that time frame,” (3) “Whether the V.A. has any rules
11 or servicing guidelines or anything else that provides Cenlar a specific amount of time to
12 begin offering new V.A. loss mitigation options,” (4) “When Cenlar became aware that the
13 V.A. was introducing new options for borrowers coming out of Covid forbearance,” and (5)
14 “Whether Cenlar was aware prior to July 23, 2021 that the V.A. was introducing new
15 options for V.A. Borrowers.”
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18 The first three questions concern matters of law that are not appropriate for either a
19 30(b)(6) designee or an expert. Indeed no witness could reasonably have answered these
20 questions in light of the fact that the VAPCP program was never mandatory for servicers.²
21 The final two questions regarding the precise timing of Cenlar’s knowledge of VA loss
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24 ¹ A copy of Plaintiffs’ 30(b)(6) notice and proposed deposition topics is attached as **Exhibit**
25 **A**.

26 ² As more fully described in the Memorandum of Law in Support of Defendants’ Motion
27 for Summary Judgment [Doc 50-1], the VA declined to make the VAPCP program
28 mandatory and stated that a servicer instead had the option to offer the program along with
other home retention options. *See* 86 FR 28692-01 at 28695.

1 mitigation options are not relevant to any of the claims in this case but if Plaintiffs believed
2 otherwise, they should have been disclosed in the noticed 30(b)(6) topics so that Cenlar
3 could prepare its witness accordingly. Plaintiffs cannot complain that Mr. Crawford was
4 unable to answer questions on subjects that were not reasonably identified in their
5 deposition notice.
6

7 **V. If the Court finds that Defendants' non-retained expert witness disclosures are**
8 **inadequate, the appropriate remedy is compelling Defendants to supplement**
9 **their disclosures.**

10 To the extent this Court finds Defendants' disclosures insufficient, Defendants request
11 that the Court allow Defendants to supplement their initial non-retained Expert Disclosures.
12 *See Excel Fortress Ltd. v. Wilhelm*, No. CV-17-04297-PHX-DWL, 2019 WL 163252, at *6
13 (D. Ariz. Jan. 9, 2019) (finding that an order compelling the disclosing party to provide
14 additional disclosures was an appropriate remedy for inadequate disclosures under Rule
15 26(a)(2)(C)). This is especially true where Plaintiffs did not previously object to the
16 sufficiency of Defendants' rebuttal expert disclosures, and Plaintiffs have previously been
17 permitted to serve late expert disclosures by the Court [*see* Order, Doc 36].
18

19 **VI. Mr. Crawford is sufficiently qualified to testify as a non-retained expert witness.**
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21 An expert qualified by experience may testify in the form of opinion if his or her
22 experiential knowledge will help the trier of fact to understand evidence or determine a fact
23 in issue, as long as the testimony is based on sufficient data, is the product of reliable
24 principles, and the expert has reliably applied the principles to the facts of the case. *See*
25 Fed.R.Evid. 702. Mr. Crawford is well qualified to testify regarding his knowledge of
26 mortgage servicing and rebut the opinions of Plaintiffs' expert, Thomas Tarter. Mr.
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Crawford has extensive knowledge and experience with the mortgage servicing industry based on more than a decade of working in the industry.³ Mr. Crawford has also familiarized himself with the facts of this case through his review of Cenlar's loan records. If Plaintiff's expert, Mr. Tarter, is permitted to offer testify regarding industry standards based on his extremely limited experience with mortgage servicing, loss mitigation, and credit disputes, Mr. Crawford should be permitted to provide rebuttal testimony regarding Defendants' compliance with industry standards.

CONCLUSION

For the reasons set forth herein, Defendants Paramount Residential Mortgage Group Inc. and Cenlar FSB ask the Court DENY Plaintiffs' Motion to Exclude or Strike Defendants' Expert Disclosure of Non-Retained Expert Raymond Crawford. In the alternative, Defendants request this Court allow Defendants to supplement their non-retained expert disclosures, and for such and other relief as they may be justly entitled.

Respectfully submitted this 7th day of July, 2023.

s/ G. Benjamin Milam

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³ See **Ex. B** (R. Crawford Dep. 10:16–21.)